REMARKS

In response to the Requirement For Restriction of May 19, 2003, Applicant elects the claims in Group I, namely, 1-15, inclusive, with traverse.

It is respectfully submitted that the Examiner has misapprehended the nature of claims 1-8. In point of fact, only claims 9-15 recite a *composition comprising the inactivated microorganisms*, while claims 1-8 refer to *the inactivated microorganisms*.

It is respectfully submitted that the relationship between the inactivated microorganisms (Group I/claims 1-8) and the process for preparing such inactivated microorganisms (Group II/claims 16-18 and Group III/claims 19-24) is exactly the same relationship as "a product X" and "the process for manufacturing product X".

The inventive concept is therefore unique and relies upon *inactivated microorganisms*. These microorganisms are emptied and filled with different substances according to the process for their preparation as recited in claims 16-24.

In addition, the Applicant wishes to draw the Examiner's attention to the fact that the above identified application is a PCT Application filed under 35 USC §371 and not a national Application filed under 35 USC §111.

According to rule 13(1) of the PCT Convention, a group of inventions is considered as a single unitary invention when a single general inventive concept can be recognized. This requirement is fulfilled when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. (See Rule 13(2) PCT Convention.)

In the instant case, the common technical relationship is that each of the three (3) groups of claims recite the presence of inactivated microorganisms.

In other words, the categories of inventions encompassed by the present Application are those depicted in Section I "Claims in different categories", Example 1, page AI-39 of Appendix P PCT Administrative Instruction, Part 2 of MPEP, namely:

a) claims 1-8, directed to inactivated microorganisms (1), refers to "Substance X" of Example 1;

b) claims 9-15, directed to a composition comprising an inactivated microorganism, which may be reformulated as "use of inactivated microorganism in food composition", corresponds to, "The use of Substance X as an insecticide (...in food compositions)"; and

c) claims 16-18 and claims 19-24, directed to process for the preparation of inactivated microorganisms corresponds to, "A method of manufacturing Substance X".

The above schematic is provided to facilitate the finding of the common technical relationship among group I-III inventions.

Observation of the requirement of Unity of Invention according to Rule 13(1) and (2) PCT is checked by the ISA and may be relevant in the national or regional phase. (See 1850 MPEP.)

The competent ISA (European Patent Office) has not raised such an objection since the invention encompassed in the present application meets the requirements of Rule 13(2) of the PCT Convention.

Applicant wishes to draw the Examiner's attention to the decision in *Caterpillar Tractor Company v. Commissioner of Patents and Trademarks* 231 USPQ, which held that the Patent and Trademark Office interpretation of 37 CFR §1.141(b)(2) as applied to Unity of Invention determinations in International Applications was not in accordance with the Patent Cooperation Treaty and its Implementing Regulations.

Therefore, when the USPTO considers that International Application as an ISA, as an IPEA and during the national phase as a designated or elected office under 35 USC §371, Rules 13(1) and 13(2) must be followed when considering unity of invention of claims of different categories, without regard to the practice in national Application filed under 35 USC §111. (See MPEP 1850.)

Withdrawal of the restriction requirement is respectfully solicited.

Please charge any fees which may be due to our Deposit Account No. 01-0035.

Respectfully submitted,

JAY S. CINAMON
Registration No. 24,156
Attorney for Applicant(s)

ABELMAN FRAYNE & SCHWAB
150 East 42nd Street
New York, New York 10017-5612
Tel. (212) 949-9022
Fax (212) 949-9190

x222\205360.rrr